

## **CHAPTER 10**

### **DEFINITIONS, SERVICE, CONSTRUCTION**

#### **Authority**

N.J.S.A. 34:13A-6(b), 34:13A-5.4(e) and 34:13A-11.

#### **Source and Effective Date**

R.2004 d.278, effective June 24, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

#### **Chapter Expiration Date**

Chapter 10, Definitions, Service, Construction, expires on June 24, 2009.

#### **Chapter Historical Note**

Chapter 10, Definitions, was adopted prior to September 1, 1969.

Subchapter 2, Service and Filing of Papers, Subchapter 3, Construction of Rules, Subchapter 4, Delegation of Authority, and Subchapter 5, Description of Organization, were adopted as R.1977 d.272, effective August 2, 1977. See: 9 N.J.R. 298(a), 9 N.J.R. 448(a).

Subchapter 6, Rulemaking Petitions Filed by Interested Persons, was adopted as R.1989 d.461, effective September 5, 1989. See: 21 N.J.R. 1505(a), 21 N.J.R. 2808(b).

Pursuant to Executive Order No. 66(1978), Chapter 10, Definitions, Service, Construction, was readopted as R.1994 d.437, effective July 28, 1994. See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

Pursuant to Executive Order No. 66(1978), Chapter 10, Definitions, Service, Construction, was readopted as R.1999 d.219, effective June 24, 1999. See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

Chapter 10, Definitions, Service, Construction, was readopted as R.2004 d.278, effective June 24, 2004. See: Source and Effective Date. See, also, section annotations.

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### **SUBCHAPTER 1. DEFINITIONS**

#### **19:10-1.1 Definitions**

The following words and terms, when used in this subtitle, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the New Jersey Employer-Employee Relations Act, as amended, (N.J.S.A. 34:13A-1 et seq.).

"Arbitration panel" means a roster of arbitrators maintained by the Commission.

"Arbitrator" means a member of an arbitration panel maintained in accordance with these rules, including the grievance arbitration panel established by N.J.A.C. 19:12-5 and the special panel of interest arbitrators established pursuant to N.J.S.A. 34:13A-16e and N.J.A.C. 19:16-5.6(a).

"Certification of representative" means the designation by the Commission of an employee organization as the exclusive representative of employees in an appropriate unit.

"Certification of results" means the certification by the Commission of the results of an election conducted by the Commission in which no employee organization received a majority of the valid ballots cast.

"Chairman" means the full-time member of the Public Employment Relations Commission who is its chief

executive officer and administrator and is also the chief executive officer and administrator of the Division of Public Employment Relations.

"Commission" means the New Jersey Public Employment Relations Commission.

"Contested transfer proceeding" means a procedure under these rules for determining whether the transfer of an employee between work sites by an "employer" as defined by N.J.S.A. 34:13A-22 was made for disciplinary reasons.

"Craft employee" means any employee who is engaged with helpers or apprentices in a manual pursuit requiring the exercise of craft skills which are normally acquired through a long and substantial period of training or a formal apprenticeship and which in their exercise call for a high degree of judgment and manual dexterity, one or both, and for ability to work with a minimum of supervision. The term shall also include an apprentice or helper who works under the direction of a journeyman craftsman and is in a direct line of succession in that craft.

"Director of Arbitration" means that officer of the Commission designated to act on behalf of the Commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

"Director of Conciliation" means that officer of the Commission designated to act on behalf of the Commission with respect to those matters related to negotiations impasses contained in N.J.A.C. 19:12 and 19:16.

"Director of Representation" means that officer of the Commission designated to act on behalf of the Commission with respect to those matters relating to representation procedures contained in N.J.A.C. 19:11.

"Director of Unfair Practices" means that officer of the Commission designated to act on behalf of the Commission with respect to those matters relating to unfair practice proceedings contained in N.J.A.C. 19:14.

"Election agent" means that officer of the Commission designated to conduct elections in accordance with the procedures set forth in N.J.A.C. 19:11.

"Fact-finder" means the Commission, any member of the Commission or any officer so designated by the Commission to perform the functions of a fact-finder as set forth in these rules.

"Fact-finding panel" means a roster of fact-finders maintained by the Commission.

"Hearing examiner" means an officer of the Commission designated to conduct any unfair practice, scope of negotiations or contested transfer hearings and to issue a recommended report and decision.

"Hearing officer" means an officer of the Commission designated to conduct any representation hearing and to issue a report and recommendations.

"Mediation panel" means a roster of mediators maintained by the Commission.

"Mediator" means the Commission, its members, employees of the Commission or any officer so designated by the Commission to perform the functions and duties of mediation.

"Officer" means all personnel of the Division of Public Employment Relations or any other individual designated by the Commission to act on the Commission's behalf. The Commission may delegate to such officer all of the powers conferred upon the Commission in connection with the discharge of its duty or duties.

"Party" means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application or other document under these rules; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this act; or any person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Commission, or any designated officer.

"Payroll deduction determination proceeding" means the procedure to determine if the majority representative of a negotiations unit of employees has satisfied the conditions required by N.J.S.A. 34:13A-5.5 to have the Commission order that the public employer initiate payroll deductions of a representation fee in lieu of dues from all unit employees who are not members of the majority representative.

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

"Recognition" means the written acceptance by a public employer of an employee organization as the exclusive representative of employees in an appropriate unit.

"Representation proceeding" means a procedure under these rules for the purpose of determining the exclusive representative of employees, if any, in an appropriate collective negotiations unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations, including a question concerning the composition of a unit designated for the purpose of collective negotiations.

"Scope of negotiations proceeding" means a procedure under these rules for the purpose of determining whether a matter in dispute is within the scope of collective negotiations.

"Showing of interest" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

"Super conciliator" means a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation or fact-finding panel, or any other super conciliator approved by the Director of Conciliation to perform the functions and duties of a super conciliator.

"Unfair practice proceeding" means a procedure under these rules for the purpose of determining whether or not anyone has engaged or is engaging in any unfair practice as set forth in N.J.S.A. 34:13A-5.4(a) and (b).

As amended, R.1974 d.56, effective March 7, 1974.  
See: 6 N.J.R. 40(b), 6 N.J.R. 159(a).  
Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Public Notice: Receipt of Petition for Rulemaking.  
See: 28 N.J.R. 4533(b).  
Public Notice: Action on Petition for Rulemaking.  
See: 28 N.J.R. 4534(a).  
Public Notice: Action on Petition for Rulemaking.  
See: 28 N.J.R. 4680(a).  
Amended by R.1999 d.219, effective July 19, 1999.  
See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).  
Rewrote "Arbitrator".

Amended by R.2004 d.278, effective July 19, 2004.

See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Added "Contested transfer proceeding", "Payroll deduction determination proceeding", and "Super conciliator"; amended "Fact-finder" and "Hearing examiner".

## **SUBCHAPTER 2. SERVICE AND FILING OF PAPERS**

### **19:10-2.1 Time for filing papers; Commission address**

(a) In computing any period of time prescribed by or allowed by these rules or by order of the Commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Regarding additional time after service of a Commission document by mail, whenever a party has the right or is required to do some act or take some action within a prescribed period after service of a Commission notice or other paper, and the notice or paper is served by mail, three days shall be added to the prescribed period, provided, however, that three days shall not be added if any extension of such time may have been granted, or if service has been made by facsimile or other electronic means.

(c) Regarding extensions of time, the Commission or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules.

(d) When these rules require the filing of any paper, the original of such document must be received by the Commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:

Public Employment Relations Commission  
PO Box 429  
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:

Public Employment Relations Commission  
495 West State Street  
Trenton, New Jersey 08618

(g) Any filings or other correspondence sent to the Commission by facsimile shall be transmitted to: (609) 777-0089.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Amended by R.1999 d.219, effective July 19, 1999.  
See: 31 N.J.R. 1168(a), 31 N.J.R. 1941(b).

In (d), added "of any document necessary to initiate any proceeding within the jurisdiction of the Commission or any officer of the Commission" at the end; and in (f), changed the zip code.  
Amended by R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

Rewrote (b); added (g).  
Administrative correction  
See: 36 N.J.R. 4165(a).

#### **19:10-2.2 Form of documents**

(a) Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) The original of each document filed shall be signed by an attorney or representative of record for the party, or by the party, or by an officer of the party and shall contain the address and telephone number of the person signing it.

(c) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the Commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8 1/2 inch by 11 inch); copies will be accepted only if they are clearly legible.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Amended by R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Deleted former (b), recodified former (c) as (b), and added a new (c).

#### **19:10-2.3 Filing by original, facsimile transmission and email**

(a) Originals of the following must be timely filed in person or via mail or courier service:

1. Showings of interest in certification and decertification cases;

2. Petitions to Initiate Compulsory Interest Arbitration, Appeals of Interest Arbitration Awards, and Requests for Special Permission to Appeal Interest Arbitration Rulings, accompanied by the filing fee; and

3. Briefs and appendices in Appeals of Interest Arbitration Awards.

(b) Facsimile transmissions will be accepted in lieu of originals for all submissions except those listed in (a) above.

(c) When filing by facsimile transmission, any requirement under N.J.A.C. 19:11, 19:12, 19:13, 19:14, 19:18 and 19:19 that an original and multiple copies of submissions be filed is waived. However, all original filings and submissions shall be retained by a filing party in its file. Such originals shall be produced upon request.

(d) Except as noted below, all correspondence and submissions, such as briefs and motions, may be sent to mail@perc.state.nj.us as an attachment to an email describing the attachment and identifying the proceeding or matter to which it pertains. Email may not be used for:

1. Initial case filings;

2. Briefs and appendices in Appeals of Interest Arbitration Awards;

3. Answers; and

4. Certifications and affidavits.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Repeal and New Rule, R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Section was "Service of pleading and other process; proof of service".

#### **19:10-2.4 Service of pleading and proof of service**

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or by private delivery service, or by facsimile transmission.

(b) Service upon an attorney or representative of record for the party shall constitute service upon the party.

New Rule, R.2003 d.62, effective February 3, 2003.  
See: 34 N.J.R. 3171(a), 35 N.J.R. 630(a).  
Repeal and New Rule, R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Section was "Electronic filing program".

#### **19:10-2.5 Electronic filing program**

The Chairman of the Commission shall have authority to initiate via an announcement on the Commission's website [www.state.nj.us/perc](http://www.state.nj.us/perc) an electronic filing program affecting the filing of certain documents.

New Rule, R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).

### **SUBCHAPTER 3. CONSTRUCTION OF RULES**

#### **19:10-3.1 Rules to be liberally construed**

(a) Except as stated in (c) below, whenever the Commission or a designated officer finds that unusual

circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the Commission or such officer shall construe these rules liberally to prevent injustices and to effectuate the purposes of the act (N.J.S.A. 34:13A-1 et seq.).

(b) When an act is required or allowed to be done at or within a specified time, the Commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the act (N.J.S.A. 34:13A-1 et seq.).

(c) In accordance with N.J.A.C. 1:1-1.3, the burden of proof shall not be relaxed.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).

### **19:10-3.2 Application of rules**

Any valid action by parties prior to the effective date of the rules will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

## **SUBCHAPTER 4. DELEGATION OF AUTHORITY**

### **19:10-4.1 Delegation of authority**

When in these rules an act is required or allowed to be done by a specific officer of the Commission, it shall be understood that the specified officer acts as the designated officer of the Commission and has all the powers necessary to permit the discharge of the duty or duties delegated. However, the Commission at all times retains the authority to designate itself or some other officer of the Commission to perform that function in a particular case or as circumstances may require.

## **SUBCHAPTER 5. DESCRIPTION OF ORGANIZATION**

### **19:10-5.1 Description of organization**

(a) The Division of Public Employment Relations is the administrative agency established to implement and administer the provisions of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq.) concerning employer-employee relations in public employment (N.J.S.A. 34:13A-5.1). The New Jersey Public Employment Relations Commission is the body established within the division which has been granted the powers and duties by the act (N.J.S.A. 34:13A-5.2). The Commission is to consist of seven members to be appointed by the Governor, by and with the advice and consent of the Senate. Of such members, two shall be representatives of public

employers, two shall be representatives of public employee organizations and three shall be representatives of the public. One of the public members is appointed as the full-time chairman and is the chief executive officer of the Commission and the division (N.J.S.A. 34:13A-5.2).

(b) The staff of the Commission consists of the personnel of the Division of the Public Employment Relations, all of whom have been designated officers of the Commission (N.J.A.C. 19:10-1.1). The division is divided into four general sections--arbitration, conciliation, representation and unfair practices, which correspond to the three main areas of responsibility delegated to the Commission by the Act. (See N.J.S.A. 34:13A-6(b); N.J.S.A. 34:13A-6(d); and N.J.S.A. 34:13A-5.4(c), respectively.) The Commission has designated a staff member to be the director of each section and has delegated to that officer the powers conferred on the Commission in connection with the duties delegated in the appropriate chapters of these rules. See N.J.A.C. 19:10-1.1 for the definition of Director or Arbitration; Director of Conciliation; Director of Representation; and Director of Unfair Practices. Any additional areas of statutory responsibility are administered under the direct supervision of the chairman.

(c) The staff of the Commission also includes a full-time general counsel and one or more deputies who render legal advice with respect to Commission matters, and represent the Commission in judicial proceedings pursuant to special counsel appointments under N.J.S.A. 52:17A-13. Additionally, the chairman of the Commission is assisted in the performance of his or her duties, particularly in the area of scope of negotiations proceedings, by an individual designated by the Commission as the special assistant to the chairman.

(d) The division, including the Commission, is located in Trenton and the public may obtain information with regard to the functions and proceedings of the Commission at the offices of the Commission, on the Commission's Web site [www.state.nj.us/perc](http://www.state.nj.us/perc) or by writing to the New Jersey Public Employment Relations Commission, PO Box 429, Trenton, New Jersey 08625-0429.

Amended by R.1994 d.437, effective September 6, 1994.  
See: 26 N.J.R. 2205(a), 26 N.J.R. 3745(a).  
Amended by R.2004 d.278, effective July 19, 2004.  
See: 36 N.J.R. 1686(a), 36 N.J.R. 3417(a).  
Rewrote (b) and (d).

## **SUBCHAPTER 6. RULEMAKING; PERIOD FOR PUBLIC COMMENT; NOTICE TO PUBLIC; HEARINGS; RULEMAKING PETITIONS**

### **19:10-6.1 Rulemaking in general**

The Commission shall pre-propose, propose, adopt, readopt, and amend rules and shall accept, process and act

upon petitions filed by any interested person seeking the adoption, amendment or repeal of rules, in accordance with the Administrative Procedure Act and in conformance with the procedures adopted by the Office of Administrative Law to implement that act as set forth in N.J.A.C. 1:30.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

Former N.J.A.C. 19:10-6.1, Rulemaking petition procedures, recodified to N.J.A.C. 19:10-6.5.

#### **19:10-6.2 Comments to be in writing; extension of period for public comment**

(a) Persons or entities seeking to submit comments on rule proposals shall make their submissions in writing to the Commission or to the individual designated to receive comments in the notice of rule proposal.

(b) The public comment period for any rule proposed by the Commission shall be extended for a period of 30 additional days when a written request for such extension is filed with the Commission within 30 days of publication of the proposal and when sufficient public interest exists. Such interest shall be demonstrated by the filing of requests for an extension by:

1. Ten or more interested persons;
2. Any organization representing the interests of three or more public employers; or
3. An employee organization, or its state or national affiliate, which is:
  - i. The recognized or certified representative of more than 100 New Jersey public employees; or
  - ii. The recognized or certified representative of three or more negotiations units of public employees.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

#### **19:10-6.3 Additional notice of rulemaking activity**

(a) The Commission shall provide at least 30 days notice of all proposed rulemaking. Notice shall be provided in the following manner:

1. Publication in the New Jersey Register;
2. Distribution of a notice or statement of the substance of the proposed rulemaking activity to the news media maintaining a press office in the New Jersey State House Complex;
3. Posting a copy of the proposal on the Commission's website at [www.perc.state.nj.us](http://www.perc.state.nj.us);

4. Posting a copy of the proposal in the lobby of the Commission's office at 495 West State Street, Trenton, New Jersey; and

5. Mailing a "Notice to Interested Persons" describing the rule proposal to a distribution list of persons and organizations who regularly use the Commission's services and are likely to have an interest in any rulemaking activity undertaken by the Commission and advising that a copy of the proposal may be viewed on the Commission's website or may be obtained from the Commission by written request.

(b) Notice may also be provided through publication in the New Jersey Law Journal, New Jersey Lawyer, or other appropriate publication.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

#### **19:10-6.4 Public hearings**

(a) On receipt of a written request within 30 days following publication of the proposed rule in the New Jersey Register, the Commission shall conduct a public hearing on a proposed rule if:

1. A public hearing is requested by a committee of the Legislature;
2. A public hearing is requested by a governmental agency or subdivision; or
3. Sufficient public interest in a hearing exists. Such interest shall be demonstrated by the filing of requests for a hearing by:
  - i. Ten or more interested persons;
  - ii. Any organization representing the interests of three or more public employers; or
  - iii. An employee organization, or its state or national affiliate, which is:

(1) The recognized or certified representative of more than 100 New Jersey public employees; or

(2) The recognized or certified representative of three or more negotiations units of public employees.

New Rule, R.2003 d.63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

#### **19:10-6.5 Rulemaking petition procedures**

(a) Any interested person may petition the Commission to make, amend or repeal any rule. The petition must be written and signed by the petitioner.

(b) The petitioner shall state the following information clearly and concisely:

1. The name of the person making the request;
2. That person's interest in the request, including any relevant organizational affiliation;
3. The substance or nature of the rulemaking requested;
4. The proposed text of the rule;
5. The reasons for the request;
6. The statutory authority for the Commission to take the requested action; and
7. Any pertinent law or regulation.

(c) Requests shall be addressed to:

Chair  
Public Employment Relations Commission  
PO Box 429  
Trenton, NJ 08625-0429

(d) Within 15 days of receiving the petition, the Commission shall file with the Office of Administrative Law the notice of petition required by N.J.A.C. 1:30-4.1(c).

(e) The petition shall be provided to the Commission at the next monthly meeting after filing.

(f) Within 60 days of receiving that petition, the Commission shall:

1. Deny the petition, in which case the Commission shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;
2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral.

Petition for Rulemaking.

See: 31 N.J.R. 4348(b), 32 N.J.R. 329(a).

Recodified from N.J.A.C. 19:10-6.1 and amended by R.2003 d. 63, effective February 3, 2003.

See: 34 N.J.R. 3172(a), 35 N.J.R. 630(b).

In (b), inserted "information" preceding "clearly" in the introductory paragraph, rewrote 7.